

DEPARTMENT OF VETERANS AFFAIRS
ADVISORY COMMITTEE ON DISABILITY COMPENSATION

June 20-21, 2016

MINUTES

Members Present:

Joseph Kirk Martin, Jr., Chairman
Hal K. Bird (via telephone)
Doris Browne
George Fay
Warren Jones
Thomas Pamperin
Jonathan Roberts
Elizabeth Savoca
Michael Simberkoff

Members Not Present:

Elder Granger
Timothy J. Lowenberg

Staff Present:

Ioulia Vvedenskaya, DFO
Jelessa Burney, Advisory Committee Management Office, VA*
Nancy Copeland, VBA
Rod Grimm, Consultant, Policy Staff, Compensation Service, VBA*
Ashley Hanahan, VHA*
Judy Myers, VHA*
LaTonyah Small, Advisory Committee Management Office, VA*
Lucas Tickner, Senior Collaboration Strategist, Compensation Service, VBA*

Also Present:

Gerardo Avila, American Legion*
Robert Epley, RAND Corporation**
David Forgosh, GAO
Paul Johnston, Veteran
Tracie Johnston, Veteran Spouse**
Matthew Labozzetta, American Legion
Jerry Manar, VFW*

Diane Boyd Rauber, NOVA
Jennie W. Wenger, RAND Corporation**

* June 20 only

** June 21 only

The Advisory Committee on Disability Compensation (ACDC) met in public session on June 20-21, 2016, in Room 630, U.S. Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20571.

Monday, June 20, 2016

Opening Remarks

Chairman Martin called the Committee to order at 8:38 a.m. Committee members, VA staff, and public observers introduced themselves. The Chairman outlined the agenda for the meeting.

Individual Unemployability: Update

Mr. Grimm explained that Title 38 United States Code Section 1155 provides that ratings be based “as far as practicable, upon average impairment in earning capacity.” VA has interpreted the “as far as practicable” language to authorize payment of individual unemployability (IU) benefits.

The first definition of total disability was outlined in the 1933 Schedule for Rating Disabilities, which states that it exists when impairments of the mind or body are sufficient to render it impossible for the average person to follow a substantially gainful occupation. An extension of the Schedule in 1941 established the current IU rating criteria, that an individual have one disability ratable at 60 percent or more; or two or more disabilities with one of them rated at least 40 percent, and a combined rating of no less than 70 percent. The 1945 Schedule for Rating Disabilities established that age may not be considered a factor in evaluating Service-connected disability.

Dr. Simberkoff asked if any testing was in place that could eliminate some or all of the IUs that currently exist. Dr. Vvedenskaya said that IU instruments were used more in some systems than others, but that VA was trying to modify the rating criteria so that it reflected the whole breadth of the disability.

The Court of Appeals for Veterans Claims and Court of Appeals for the Federal Circuit have issued many precedent opinions affecting Veterans’ rights associated with IU evaluations, including *Moore v. Derwinski*, which established that “substantially gainful occupation” refers to the ability to earn a living wage; *Blackburn v. Brown*, which declared that entitlement to total disability individual unemployability (TDIU) must be established solely on the basis of impairment arising from Service-connected disabilities; *Faust v. West*, which dictated that VA must consider the poverty threshold in determining entitlement to an IU rating; *Roberson v. Principi*, which established that VA must consider whether a Veteran is

entitled to IU once s/he submits evidence of a medical disability and unemployability; Rice v. Shinseki, which ruled that a request for a TDIU evaluation is not a separate request for benefits; and Ortiz-Valles v. McDonald, which held that 38 Code of Federal Regulations (C.F.R.) 4.16(a) does not limit consideration of marginal employment to current employed Veterans when determining IU entitlement.

Tools for monitoring employment status include VA Form 21-4140, an employment questionnaire sent annually to Veterans, and an Income Verification Match which provides income information from the Social Security Administration (SSA). Effective October 1, 2016, VA will institute Post Award Audit Processing, under which it will only review running IU awards when the Veteran's income exceeds the poverty threshold. Upfront Income Verification, the expansion of VA's data-sharing collaboration with SSA and the Internal Revenue Service, provides each Regional Office (RO) with access to wage income data for each Veteran that applies for IU.

Current VA policy dictates that all Veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled.

Chairman Martin asked Mr. Grimm to comment on five examples of IU he provided before the meeting. Mr. Grimm said he tried to come up with the five examples of the most common issues encountered. Dr. Simberkoff observed that in one case, a Vietnam Veteran filed for and was granted IU status in 2013 after retiring from his civilian occupation. Dr. Savoca pointed out that there was no evidence the Veteran left his civilian occupation because of his service-connected disability. Mr. Grimm said that some people argue this case illustrates why VA should consider age in evaluating for IU.

Several Committee members asked about the connection between Social Security disability compensation and how much a retired person collects. Dr. Vvedenskaya noted that that would be a good topic of discussion during the RAND Corporation presentation the following day.

Dr. Savoca noted that in one example a Veteran voluntarily left his job, but the employer had made concessions for his limited physical capacities. Mr. Grimm said that would actually work in the Veteran's favor.

Chairman Martin noted that 2013 data showed the number of TDIU recipients to be about 333,000, and asked if there were more recent numbers. Mr. Grimm said it would probably take a month to get that information, but he suspected the figures were continuing to rise.

The Committee recessed from 10:20 a.m. to 10:51 a.m. to await the arrival of the next scheduled presenter.

C&P Exams Process Overview/Improvements/Initiatives

Mr. Tickner provided the overview. The VA seeks to improve the Compensation and Pensions (C&P) Examination Process to make it consistent, predictable, and easy for Veterans. The percentage of Veterans who responded "Very Satisfied" or "Somewhat

Satisfied” when asked about overall satisfaction between January 7 and May 15, 2016, has ranged from 75.60 to 79.06 percent. The goal is to raise that figure to 90 percent.

The initial research and design took place in January, followed by a feasibility assessment in March. Feedback on the initiatives was gathered in April from VHA and VBA staff. The first pilot is almost complete. The second will take place in July and August, and the national rollout is set for September and October.

One project will locate a VBA representative in a medical facility to talk with Veterans, answer questions about benefits, and provide guidance. Dr. Simberkoff asked about having a virtual Veteran Service Representative. Mr. Tickner said the Leadership VA team would pursue that option if there appeared to be sufficient interest.

Another initiative will allow Veterans to get an examination outside of the C&P process at a time that is convenient for them. Mr. Pamperin asked how a Veteran could get his/her own exams when there were different worksheets for different circumstances. Mr. Tickner said clinics work with Veterans to help them determine what exams they need. Mr. Bird noted that he had had difficulties getting an exam at the Dallas VA Medical Center, and added that there were other Veterans in similar situations. Mr. Tickner replied that one of the initiatives was to better educate Veterans on what to expect at current touch points and identify additional touch points to educate the Veteran.

The VA seeks to improve letters provided to Veterans at the Claim Acknowledgment, Approval for Exam, and Post-Exam phases. It also wants to minimize blind scheduling. This initiative has drastically reduced the no-show rate among Veterans with appointments. Mr. Fay asked about scheduling appointments online. Dr. Simberkoff pointed out that only a small percentage of Veterans were signed up for the MyHealtheVet online service. Mr. Tickner said ultimately Veterans should be able to schedule appointments online.

VA has launched a campaign to improve communications to Veterans by setting initial expectations for the C&P process. One initiative surveys Veterans at various touch points.

Mr. Bird asked about the process for Veterans seeing mostly civilian doctors. Mr. Tickner said VA asked Veterans to supply any information from civilian doctors, but the Veteran would still need to take a C&P exam.

Dr. Browne asked how the process was working on records coming from the Department of Defense (DoD). Dr. Vvedenskaya offered to make that a topic of discussion for the next Committee meeting.

Mr. Bird asked about the status of the rollout. Mr. Tickner said the project was still in the pilot phase. The goal was to determine which of the initiatives would give VA the biggest bangs for the buck, and go from there.

Mr. Fay pointed out that this set of initiatives represented just one part of myVA, and asked if there was an overall management group to make sure Regional Offices did not get inundated. Mr. Tickner said there was a myVA project management team that met every week, and there were senior VA officials responsible for each myVA initiative.

The Committee recessed from 11:53 a.m. to 1:07 p.m. for lunch.

Afternoon Session

2016 Biennial Report Preparation

Chairman Martin announced that ACDC member John Maki had passed away on June 3, and that the thoughts and prayers of the Committee were with his family.

Every two years the Committee submits to the Secretary a Report on the programs and activities of the Department relating to the payment of disability compensation, including recommendations for administrative and legislative action. The Committee may submit Interim Reports and recommendations as it deems appropriate.

Chairman Martin proposed that the Committee look at its 2014 Report and the VA's response to each item to see if it could be closed, recycled, or tabled. From there, the Committee could determine what old and new items it could include in its 2016 Report.

The 2014 Report contained 23 recommendations. The VA Concurred with nine of them. It Concurred in Principle with the other 14, but was not taking any action on them at this time.

The first issue was the continued systematic review of the VA Schedule for Rating Disabilities (VASRD). The Committee had recommended that the master plan be kept on schedule. The VA Concurred with this recommendation, and assured the Committee that the plan was moving forward as scheduled and would be completed in March 2017. Dr. Simberkoff and Mr. Pamperin said they perceived the process had fallen behind. Chairman Martin reminded members that Dr. Vvedenskaya would brief them on VASRD the following day. Mr. Fay commented that there were no timelines for rulemaking, and that the Committee had previously discussed a recommendation for establishing guidelines on how long each step should take. Dr. Jones asked if there was a sense as to how much time was necessary for each system, and added that any timeline should be realistic. Dr. Vvedenskaya said that multiple VA offices must concur with a rulemaking, which makes the process lengthy. Mr. Fay and Dr. Simberkoff argued that the process was taking an unreasonably long time. Dr. Simberkoff proposed recommending that the Secretary establish timelines for implementation of each of the publications of the Final Rules and create a system for periodically reviewing and updating them as medical science evolves. Dr. Vvedenskaya pointed out that there was already a timeline in the project management plan, it just hadn't been observed. Dr. Savoca said it would be good to have the process reviewed periodically. Chairman Martin said this topic could be included in the 2016 Report.

The second recommendation called for continuity in the revision process. The VA response was Concur. Dr. Simberkoff pointed out that the team reviewing the VASRD had lost four physicians. Dr. Vvedenskaya said three had left for better paying jobs, and one had retired. Dr. Simberkoff said the Department should provide adequate compensation to attract and retain people who get the job done in the best way. Chairman Martin agreed to flag the issue.

Recommendation 3 concerned diabetes. The VA Concurred in Principle. Dr. Vvedenskaya said a new working group was going to be formed. Mr. Fay argued that VA's response

should be Concur since it seemed to be doing something about the problem. Ms. Copeland replied that Concur would imply that a plan was in place, which was not the case here. Chairman Martin said the Committee could recommend that the Secretary adopt a diabetes implementation plan.

The fourth recommendation called for establishing an action plan for obtaining current economic loss data for all body systems. The VA Concurred in Principle, but believed that existing earnings loss studies were available at no additional cost. Dr. Savoca pointed out that a representative from the RAND Corporation would be speaking on this topic the following day.

The fifth recommendation dealt with individual unemployability. The Committee recommended that VA continue the study of IU and incorporate the results of an ongoing Government Accountability Office (GAO) study. The Committee agreed to revisit the issue after the following day's briefing from the RAND Corporation.

The next recommendation was that Decision Review Officers (DROs) be utilized for appeals processing. The VA Concurred. The Committee further recommended that the DRO appeal option be clearly stated on the Notice of Denial form, as it offered a timely solution to some appeals issues at the Regional Office. The VA Concurred with this recommendation as well, and agreed to implement that change.

The Committee recommended that the Secretary and Congress favorably consider adding manpower to the appeals process at the Regional Office level. The VA Concurred, mentioning it had allocated 200 full time employees for appeals processing in the 2016 budget. Dr. Vvedenskaya assured the Committee that most DROs were experienced Rating Veterans Service Representatives. Mr. Pamperin observed that it looked like VA had a plan.

The next issue concerned the use of Disability Benefit Questionnaires (DBQs). The Committee recommended that the VA analyze the acceptability of DBQs among VA and civilian physicians by disability, and adapt future iterations to the requirements of all examining physicians and claims adjudicators. The Committee had pointed out that use of DBQs as the sole or primary evidence for determining disability was in question. The VA responded that because of the relatively small number of DBQs completed by private or VA treating clinicians, the VBA had little information regarding civilian physician comments or suggestions to allow meaningful analysis. Chairman Martin interpreted that as the VA saying that it had not had enough time to assess the impact of civilian physicians using DBQs. He said the Committee could figure out how it wanted to phrase any recommendations on this issue in the 2016 Report.

The Committee recessed from 2:54 p.m. to 3:10 p.m.

The next issue dealt with medical doctors in Regional Offices and claims adjudicators in medical centers. The Committee strongly recommended that medical doctors be co-located in Regional Offices to expedite claims processing, and that claims personnel be available at VA Medical Centers to assist patients with claims. The VA Concurred in Principle, adding that the VBA was considering a national pilot to assign RO employees to medical centers, and that medical officers that rotate to Regional Offices have to share duties with medical

centers. Dr. Simberkoff remarked that VBA had gone beyond the pilot, and was planning to implement the new system nationwide.

The following issue was separation health exams. The VA Concurred with the Committee's recommendation, adding that it was a DoD-mandated closed issue. Chairman Martin noted that the recommendation still had not been implemented at Guard and Reserve bases with any consistency, even though the regulation was supposed to be mandatory for Guard and Reserve by January 2016. The VA is aware of this, and its representatives at the Joint Executive Committee are working on this issue. The Committee agreed that any further recommendations on this issue would be specific to Guard and Reserve, and include the Transition Assistance Program (TAP) as well as separation health exams. Chairman Martin said the Committee would discuss the matter further when it covered other Guard and Reserve issues.

The Committee next addressed zero percent evaluation in the VASRD, particularly for conditions that later progress into an issue that could be compensated. The VA Concurred in Principle with the Committee's recommendation, adding that VBA would consider the use of a specified zero percent evaluation criteria when revising individual diagnostic codes. Chairman Martin said he did not think the Committee needed to do anything further on the issue.

The next issue concerned determining the presumption of service connection. The Committee recommended that the VA should consider adopting the presumptive categories proposed by an Institute of Medicine study from 2008. The VA's response was that VBA would consider adopting the proposed categories which more closely follow the standard of "at least as likely as not," used in direct service connection. Nevertheless, it noted that there were stakeholders who may see the proposed "equipoise evidence" category as more restrictive than the current process, so further evaluation was needed before VA could adopt the recommendation. Chairman Martin said he did not think the VA was asking the Committee to do more on the issue at this point, so it was closed for the time being.

The following issue dealt with the creation of a Fully Developed Appeals pilot program. The VA Concurred in Principle, saying the Express Appeals Act was pending in Congress.

The Committee had recommended that the VA continue to emphasize the importance of recognizing and resolving National Guard and Reserve Component-unique issues at the Joint Executive Committee with its Department of Defense counterparts. The VA Concurred in Principle, saying that it was currently examining the feasibility of establishing a Joint Benefits Executive Committee Working Group/Subcommittee unilaterally focused on National Guard and Reserve matters. Chairman Martin asked whether that working group had actually been established. Chairman Martin said the Committee could find out whether this recommendation had been fulfilled when it talked to representatives from the Guard and Reserve.

The Committee further recommended that VA continue to support, staff, resource, and expand as appropriate the VBA National Guard and Reserve Matters Office. The VA Concurred, adding that the office was now called the Office of Transition, Employment, and Economic Impact.

Another recommendation emphasized the importance of Transition Assistance Briefings for traditional Guard and Reserve members. The VA Concurred in Principle, saying that participation in TAP was not generally allowed for Reserve Component, Army National Guard, and Air National Guard, unless the individual completed 180 days of active duty. Chairman Martin felt that was a problem. Mr. Bird asked if the Committee should recommend the threshold be a different amount of time. Mr. Pamperin pointed out that The Veterans Opportunity to Work Act mandated briefings for those who had completed 180 or more days of active duty, but did not prohibit it for those who had not. Chairman Martin said he thought the threshold should be lower so it could capture individuals with multiple short periods of active duty, and added that he wanted to spend some time rewording a recommendation on this issue for the next Report.

The next Committee recommendation was that DoD and Services work with the National Guard and Reserve Components on availability and access to electronic records, including Health Artifact and Image Management Solution. Mr. Bird recommended (1) that the VA follow the metrics on the percentage of delivery of success for the separation physical; (2) provide a disability evaluation examination at the separation briefing; (3) allow the Veteran to set up an eBenefits account at the briefing; and (4) include a Veterans' Service Organization (VSO) representative at the briefing. Chairman Martin promised to include an item on these issues in the 2016 Report. Dr. Vvedenskaya agreed to request the numbers from the Guard and Reserve, and from Mr. Tickner.

The Committee further recommended that the VA emphasize the importance of capturing civilian treatment records and their inclusion in electronic Service Treatment Records between tours of active duty and prior to separation and/or retirement. Chairman Martin said there were mechanisms in place to do this, but that it tended to take time, and that the Committee would look to address this issue in its 2016 Report.

In the next recommendation, the Committee urged VA to work with DoD and the services to ensure multiple DD214 forms for National Guard and Reserve Members become part of the Official Military Personnel File. The VA Concurred in Principle, citing the National Guard Report of Separation and Record of Service, or National Guard Bureau Form 22. Chairman Martin said interested members could talk more about this issue when they put together a recommendation.

The Committee also recommended that VA work with DoD and the Services to ensure Separation Health Assessments be provided for National Guard and Reserve Members. The VA Concurred in Principle, and included a timeline. Chairman Martin noted that even though the timeline had come and gone, this was still not happening, so it would be discussed in the 2016 Report.

In the next recommendation, the Committee encouraged VA to continue education within VA to foster a common operating picture of the new generation of total force Veterans. The VA Concurred and included a National Guard and Reserve Study Report completed in May 2015. Chairman Martin said the Committee would ask for that report at the next Guard and Reserve briefing.

Chairman Martin asked Committee members if there were other items they wanted to include in the 2016 Report. One issue he proposed was whether the electronic initiatives

spearheaded by Under Secretary for Benefits Allison Hickey would continue after her departure. Another was the future of contract medical care. Dr. Vvedenskaya proposed a briefing on these issues at the Committee's September meeting.

Chairman Martin volunteered himself, Mr. Bird, and Mr. Lowenberg to work on the Guard and Reserve issues. Dr. Savoca agreed to lead the IU working group. Chairman Martin said he would list the big-ticket items, and the Committee could decide what it wanted to do about each one.

Mr. Pamperin and Dr. Simberkoff cited the creation of timelines for VASRD as an important issue.

Dr. Jones asked if there had been any discussion about issuing recommendations surrounding military sexual trauma (MST). Chairman Martin said it had been awhile since the Committee had received an MST briefing, so another one might be useful.

The Committee decided not to pursue recommendations on the zero percent evaluation, physicians in Regional Offices and adjudicators in medical centers, DBQs, or DROs in VA Regional Offices.

Dr. Vvedenskaya reminded the Committee that the 2016 Report was due September 30. The only available dates for its September meeting were September 12-13 if it kept to its tradition of meeting on Monday and Tuesday.

There being no further business, at 4:29 p.m., Chairman Martin declared the Committee in recess until 8:30 a.m. the next day.

Tuesday, June 21, 2016

Opening Remarks

Chairman Martin reconvened the meeting at 8:54 a.m. He summarized some of the previous day's discussions and outlined the agenda for the remainder of the meeting.

Opportunity for Public Comments

Paul Johnston, a Veteran of the first Gulf War, commented on the scoring of percentages for disability claims. He noted that he was exposed to a number of factors that were not listed, which made it difficult for him to be properly diagnosed and treated. He added that he had received tools to treat his condition at home, but because he was not going to the hospital he was not receiving the appropriate rise in percentage. Dr. Vvedenskaya assured Mr. Johnston that the VASRD update team was working to address his concerns.

Mr. Pamperin asked if telemedicine consults with nurses were included in a Veteran's health records. Dr. Simberkoff said they were through programs like MyHealtheVet. Mr. Johnston said he had the MyHealtheVet app on his phone, but it did not work all the time. Dr. Jones suggested that the Committee discuss the issue of telehealth at some point.

Mr. Johnston's wife, Tracie, noted that her husband had been diagnosed with severe reactive airway disease and given an IU rating of 100 percent. However, his condition had recently been downgraded to asthma and sleep apnea, with an IU rating of only 90 percent. Mr. Johnston's unit, the 144th National Guard Services and Supplies Company, was exposed to depleted uranium for four or five months. Of the 150-200 people in the unit, only the 27 with shrapnel wounds have been tracked. Dr. Simberkoff asked if Mr. Johnston had been tested for depleted uranium. Ms. Johnston said only the urine test was performed, not the lung test.

RAND Earnings Loss Studies (Historic, Ongoing and Future Projects)

Dr. Wenger gave the presentation. RAND has conducted research on backlogs in processing compensation claims, performance monitoring, and implementation. It has extensive research on how to use electronic records in various roles, as well as privacy concerns and the role of government.

Last year Congress mandated a study on several aspects of VA healthcare. Major research questions centered on current and projected healthcare needs of Veterans, capacity to provide access to care, and what policymakers should consider in changes to VA purchased care.

VA recently sponsored a nine-month study. The study projects that the number of Veterans from the post-9/11 era will exceed the number from the first Gulf War era around 2019. The study also looked at the number of VA patients likely to look for care between now and 2024, as well as best estimates for what types of care would be needed in the next 10 years or so. It found that Veterans are likely to continue to be concentrated in the Southeast, Mountain, and Pacific regions. The study calculated what percentage of Veterans lived within 40 miles of a medical facility, and took into account whether a Veteran lived in a metropolitan area and how likely s/he is to depend on public transportation.

RAND has found higher unemployment for post-9/11 Veterans and their spouses than their civilian counterparts, particularly for Veterans aged 18-24. RAND is interested in how Veterans fare economically after leaving the military. It has two big projects dealing with military spouses.

The 100,000 Jobs Mission, sponsored by JP Morgan Chase & Company, seeks to hire 100,000 Veterans by 2020. Last year, the number of Veterans hired passed 265,000.

One of RAND's projects, sponsored by the U.S. Army, found that about half the transitioning Veterans claimed unemployment compensation between fiscal year (FY) 2010 and 2012. There are existing occupational crosswalks suggesting what a Veteran might do in the civilian world, but oftentimes the Veteran will find these crosswalks problematic. RAND set out to build a crosswalk based much more closely on data. It asked Soldiers at several different bases the knowledge, skills, and abilities required to do their jobs, which has allowed RAND to compare military occupations with civilian ones.

Dr. Simberkoff asked if RAND looked at the employment rate for the 10 most common jobs in the Army. Dr. Wenger said that civilian data sets tended to be designed by civilians, and often did not include key pieces of information relevant to Veterans. The American Veteran

Panel is designed to be an ongoing, nationally representative sample of Veterans, and will hopefully get around this problem. RAND has been using its American Life Panel (ALP) as a model for the American Veteran Panel.

Dr. Savoca asked about the ages of the Veterans in the study. Dr. Wenger said it was likely to be focused on younger Veterans, but RAND's Health and Retirement Survey provided a pretty good source of information on older ones. She added that the Veteran transition study could help RAND explore the issues of housing and homelessness.

Dr. Jones pointed out that local context was a large factor and asked if RAND had been able to draw parallels between its work on healthcare and its work on employment. Dr. Wenger said the short answer was yes, and added that RAND had found a sharp decrease in long-distance movement for work reasons.

Dr. Wenger offered to return with a more focused presentation in September.

Mr. Bird said there one of the primary challenges to securing employment for transitioning Veterans was that human resources departments like to hire people with civilian experience on their resumes. Dr. Simberkoff added that a lot depended on what the Veteran's occupation in the military was. Dr. Wenger replied that RAND had conducted a series of studies on Beyond Yellow Ribbon programs, which established ongoing relationships with civilian employers, and helped determine which ones were genuinely interested in hiring Veterans.

Dr. Roberts asked if there was a correlation between disabled Veterans hired by civilian industries and non-disabled Veterans. Dr. Wenger said she had not observed industry level differences, but she could look into the matter.

Chairman Martin said he liked the idea of a longitudinal population study. Dr. Wenger agreed, saying RAND had formed strong relationships with ALP participants.

The Committee recessed from 10:07 a.m. to 10:30 a.m.

GAO Report Discussion

The Committee discussed the results of a study GAO had completed in 2015. GAO had recommended that VA issue updated guidance to determine eligibility, identify a comprehensive quality assurance approach to assess benefit decisions, verify Veteran self-reported income, and move forward on studies suggested by its advisory committee. VA concurred with each of these recommendations. Dr. Savoca argued against making a specific recommendation on age. Chairman Martin agreed, saying it was beyond the Committee's area of expertise. Dr. Savoca observed that GAO had not identified all the problems. Chairman Martin asked if the Committee's recommendation should be to enable the GAO's recommendations or study the GAO recommendations for implementation.

Mr. Forgosh told the Committee that the GAO report arose out of concerns by the House Veterans Affairs Committee that some people were receiving IU benefits that should not have been. GAO set out to determine how to define employability and whether age should be a factor.

Chairman Martin asked if the GAO project was complete. Mr. Forgosh replied that GAO would monitor VA over the next three years to see if the recommendations were being implemented.

Chairman Martin asked Mr. Fay if he would be willing to work with Dr. Savoca on IU. Mr. Fay agreed.

2015 Interim Report Status Update

ACDC had not received VA's response to its 2015 Interim Report. Dr. Vvedenskaya said she was checking its status on a regular basis. Currently it was being reviewed by the Office of the Under Secretary for Benefits.

The Committee recessed from 11:28 a.m. to 12:30 p.m. for lunch.

Addendum—Opportunity for Public Comments

Kathy A. Lieberman of the law firm Lieberman & Mark provided written comments to the Committee, which Chairman Martin read into the record. Lieberman & Mark represents Veterans and their dependents on disability benefits matters. Ms. Lieberman urged VA to reconsider planned changes to extra-schedular ratings, provide greater clarity to some undefined terms in the ratings schedule, provide guidance or a chart for evaluating percentage of total exposed areas in assessing skin conditions, provide for a compensable rating for Service-connected hearing loss in cases in which the Veteran uses hearing aids, amending 38 C.F.R. Paragraph 4.85(a) to include controlled speech discrimination tests other than the Maryland CNC test, provide for a minimum compensable rating for any Service-connected condition that requires treatment with medication, and facilitate greater communication between attorneys and Regional Office staff.

Diane Boyd Rauber of the National Organization of Veterans' Advocates offered written comments about extra-schedular ratings to the Committee, which Chairman Martin accepted.

VASRD Implementation Update

Dr. Vvedenskaya provided the update. She noted that Laurine Carson, VBA's Assistant Director for Compensation Service, oversaw the project. There were three medical officers on staff, including Dr. Vvedenskaya, and three consultants for regulations.

In late 2009, the VBA Under Secretary for Benefits initiated a project with the goal of revising and updating the 15 body systems in the VASRD. The plan proposes to review each system by March 2017. Each system will then be reviewed in a staggered cycle so the published regulation is not more than 10 years old.

The scope of the project includes reviewing and modernizing each of the 15 body systems; updating VA examination worksheets and templates; implementing applicable policy, procedural, manual, training, and computer system changes; and creating a unique strategy for each system.

There are three phases to each VASRD body system review: the Working Group Phase, the Development Phase, and the Concurrence Phase. In the Concurrence Phase, each draft is comprehensively assessed inside and outside of VA for its medical, legal, and economic impact. The proposed regulation needs to be approved at each level of concurrence before it can proceed to the next. The Office of Regulation Policy and Management, Office of the General Counsel (OGC), Veterans Health Administration, and ultimately the Secretary must concur with the draft. Once the Secretary signs off, the Office of Management and Budget must approve of the draft within 90 days.

Each system review has cleared the Working Group and Development Phase. The Proposed Rule has been published for five systems. The Digestive System's Proposed Rule is being drafted. All other systems are in the VA/VBA Concurrence Phase. No Final Rule has been published yet.

Dr. Simberkoff asked when a Final Rule would take effect. Mr. Pamperin said it would be effective for any claim filed after it was published. Dr. Vvedenskaya said once VBA concurs on the new rule, it would begin training on it. Mr. Pamperin added that the old rule would be phased out over time. Dr. Vvedenskaya said there were clear guidelines on how to apply rules that had just been published.

Chairman Martin asked if VA intended to have Final Rules for all systems implemented by March 2017. Dr. Vvedenskaya said it only intended to have Proposed Rule drafts for each system by that date.

Dr. Jones observed that there was increasing pressure in the world of medicine to comply with quality reviews and asked if that was having any effect on the VA. Dr. Simberkoff answered that VHA's system was incredibly driven by metrics. Dr. Vvedenskaya said she was not aware of any specific plan for VHA to gather metrics, but VA tried to incorporate as much science as possible. Mr. Bird pointed out that capturing metrics was exactly what Lean Six Sigma did.

Dr. Browne asked if there was any way to shorten the process of updating VASRD. Dr. Vvedenskaya replied that Compensation Service had succeeded in shortening parts of the concurrence process over which it had control. Mr. Fay proposed that some of the steps be done concurrently rather than sequentially. Chairman Martin said it was probably beyond the scope of the Committee to recommend specific timelines for the VASRD process.

Addendum—2016 Biennial Report Preparation

The Committee had selected eight issues for incorporation into its 2016 Report: the VASRD schedule, IU, the VBA Live Manual, the National Workflow Queue, Guard and Reserve issues, crosslinking with other VA advisory committees, the VA appeals process, and the 2015 Interim Report. Chairman Martin announced the formation of subcommittees for each issue.

The Committee recessed from 1:52 p.m. to 2:04 p.m. to give members time to think about which subcommittee(s) they wanted to work on.

Members were assigned to subcommittees as follows:

VASRD: Mr. Pamperin, Mr. Fay, Mr. Bird, Dr. Granger, and Dr. Simberkoff

IU: Dr. Savoca, Mr. Fay, and Dr. Browne

VBA Live Manual: Chairman Martin and Dr. Roberts

National Work Queue: Mr. Fay and Dr. Browne

Guard and Reserve: Mr. Bird, Mr. Lowenberg, Chairman Martin, Dr. Jones, and Dr. Simberkoff

Advisory Committee Crosslinking: Dr. Jones and Chairman Martin

Appeals Process: Mr. Lowenberg, Mr. Pamperin, and Dr. Roberts

2015 Interim Report: Chairman Martin

Committee Deliberation

The Committee brainstormed topics for its September meeting, including the National Workflow Queue, women Veterans' issues, Veteran homelessness, the Veteran Population (VetPop) survey, and the GAO report. Dr. Vvedenskaya promised to incorporate these items into the agenda to the extent possible, while setting aside at least half a day for preparation of the 2016 Biennial Report.

Chairman Martin observed that many Committee members and public observers had difficulty getting through security for the meeting, and proposed noting this in the 2016 Report. One possible solution would be giving badges to Committee members.

The Chairman asked if the newer members had received an ethics briefing. Dr. Vvedenskaya promised to look into the matter.

Adjournment

There being no further comments, Chairman Martin adjourned the meeting at 2:44 p.m.

Toby Walter
Neal R. Gross & Company
Preparer of the Minutes

Ioulia Vvedenskaya, Committee DFO

Joseph Kirk Martin, Jr.
Committee Chairman